In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 19533 of 2006

Date of Decision: 08.12.2006

Raj Kumar

…Petitioner

Versus

Union of India & others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Ravinder Malik, Advocate,
for the petitioner.

JUDGMENT

M.M. KUMAR, J.

The petitioner has prayed for quashing order dated 5.7.2006 (P-4), passed by the Commandant 23 Bn Khumulwng, Tripura (West), imposing the punishment of compulsory retirement on the petitioner. The appeal filed by him has also been dismissed by the impugned order dated 9.10.2006 (P-6), passed by the Deputy Inspector General of Police, CRPF, Imphal.

Brief facts of the case are that the petitioner was enlisted in Central Reserve Police Force on 25.1.1993. On 6.10.2005, he was

detailed for emergency duty with Quarter guard with Unit vehicle bearing registration No. HR-26-L-7803 M/Gypsy. On 13.12.2005, a charge sheet was issued to him alleging that on 6.10.2005 at about 8.30 p.m. he left the camp along with the aforementioned Unit vehicle un-authorisedly and without proper permission from the competent authority. He collided the above mentioned vehicle with a tree on Assam-Agartala road. The Memorandum of Charge along with Statement of Articles of charge, Statement of Imputation of Misconduct, List of Documents and List of Witnesses by which the articles of charge was proposed to be proved, has been issued on 13.12.2005. The petitioner was given 10 days time with the direction to submit written statement. He failed to submit any written statement in his defence. The Deputy Commandant of the Unit was appointed as Enquiry Officer vide order dated 29.12.2005. The Memorandum of Charge along with the annexure, which were communicated to the petitioner, were read out and explained to him by the Enquiry Officer. He is stated to have received the copies of the Memorandum of Charge and have expressed no objection to carry out the departmental inquiry. The petitioner pleaded guilty to the charge levelled against him. The Enquiry Officer has conducted the inquiry as per the procedure laid down in the relevant rules and instructions. He submitted his inquiry report after recording finding that the petitioner was proved guilty of the charges. The punishing authority accepted the findings of the Enquiry Officer and held that the inquiry was conducted as per the procedure laid down in the relevant rules and

instructions. The petitioner was found to have given ample opportunity to defend himself by cross-examining the departmental witnesses. A copy of the inquiry report was handed over to him on 19.4.2006 with a direction to submit his representation, if any, within 15 days from the date of receipt of the inquiry report. However, he failed to submit any representation. The punishing authority after perusing the inquiry report has held as under:-

> "4. I, have carefully gone through the D.E. proceedings and evidence on record. After thoroughly examining the entire issue from all angles applying judicious mind to all aspects of the case. I fully agree with findings of the E.O., I have come to conclusion that No. 933060055 Ct(Dvr) Raj Kumar is guilty of the charge framed against him and the charge has been proved beyond any shadow of doubt by substantiation and own admission of the delinquent. After consideration all aspects, as such he is not a fit person to be retained in disciplined Force like CRPF and deserves stringent punishment as per existing rules and instruction on the subject matter. But, keeping in view of his length of Service rendered to the Force and Young age I take a lenient view and in exercise of the powers vested in me under Section 11(1) of CRPF Act 1949 read and Rule-27 (a) Chapter-VI of CRPF Rules 1955, impose the penalty of "COMPULSORY RETIREMENT" to No. 933060055 Ct(Dvr) Raj Kumar of HQ/23 Bn. CRPF with effect from 6/07/2006 (FN). Accordingly, No. 933060055 Ct (Dvr) Raj Kumar is also struck off strength of this Unit from the same date i.e. 6/7/2006 (FN). His suspension period with effect from 07/10/2005 to 06/01/2006 will be treated as such and he will not be paid any extra amount except whatever he has already been paid as subsistence allowance during the period of his suspension.
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> 5. Govt. dues, if any, outstanding against him will be recovered from the dues payable to him and deposited into Govt. treasury. Identity Card issued to the individual should also be withdrawn and deposited with the connected authority for further

The appeal of the petitioner under Rule 28 of the Central Reserve Police Force Rules, 1955 (for brevity, 'the Rules') has also been rejected vide order dated 9.10.2006. The submissions made in support of the appeal have been dealt with and rejected by the Appellate Authority by observing as under:-

> "1. The contention of the appellant is not correct and it is due to ignorance of rules. The charge sheet was framed against him for the misconduct/offence committed by him which is punishable under Section 11(1) of the CRPF Act 1949 and the punishment of Compulsory Retirement from service' was awarded as per rule 27 of the CRPF Rules 1955 after a department enquiry, which is correct.
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> 2. Taking out Unit vehicle from the camp without proper indent/permission in operational area is a serious offence. However taking into a lenient view on the matter, the Commandant 23 Bn awarded the punishment of Compulsory retirement to the appellant, which is commensurate to the gravity of the offence.
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> 3. Order for deduction of a sum of Rs. 24,850/- only from his pay and allowances was issued to make good the losses caused to the Govt due to fault on the part of the appellant, as he was fully held responsible in the Court of Inquiry. The penalty of Compulsory retirement imposed on him is for the misconduct committed by him. Thus there is no double jeopardy found in this case.
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> 4. As per records, the Department Enquiry was conducted against the appellant as per rule and laid down procedure. His allegation regarding misusing of powers by the disciplinary authority is therefore, incorrect as no evidence is forthcoming in the records.
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> 5. As per records, the E.O. has conducted the preliminary hearing on 2/1/2006 and the appellant himself admitted that he received copy of the charge sheet and other documents. Further, he had also pleaded guilty of the charge. His statements were recorded by the E.O. on 25/3/06 and 10/4/06.

> All reasonable opportunities were given to him during the course of enquiry for his defence by the E.O. as well as by the disciplinary authority and the D.E was conducted in a free & fair manner. Thus, his contention is untenable."

The punishment of compulsory retirement has, thus, been found to be commensurate to the nature of offence.

We have heard Shri Ravinder Malik, learned counsel for the petitioner. He has submitted that the punishment of compulsory retirement cannot be treated as minor punishment as per the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949 (for brevity, 'the Act'). According to the learned counsel, Section 11 does not contemplate imposition of any such punishment and, therefore, the order or compulsory retirement passed against the petitioner is liable to be quashed along with consequential order passed in appeal.

We have given out thoughtful consideration to the submissions made by the learned counsel and are of the view that this petition is liable to be dismissed. The inquiry in this case has been conducted under Rule 27 of the Rules read with Section 11 of the Act. For facility of reference, relevant provisions of Rule 27 of the Rules along with Section 11 of the Act are reproduced hereunder:-

Rule 27 of the Rules:

"27. Procedure for the Award of Punishments. – (a) The punishments shown as items 1 to 11 in column 2 of the table below may be inflicted or (on?) non-gazetted officers and men of the various ranks shown in each of

the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in columns 7.

TABLE

Sl. No.	Punishment	Subedar (Inspector)	Sub-Inspector	Others except Const & enrolled followers	Consts & enrolled followers	Remarks
1	2	3	4	5	6	7
1.	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry.
xx	xxx	xxx	xxx	xxx	xxx	xxx
4.	Compulsory retirement	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry.
Xx	xxx	xxx	xxx	xxx	xxx	xxx"

Section 11 of the Act:

"11. Minor punishments. – (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,-

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the Force."

A perusal of the above rule shows that after inquiry if the charges have been proved then the punishment of compulsory retirement as provided in Rule 27 of the Rules could be imposed and we find no substance in the submission made by the learned counsel that imposition of penalty of compulsory retirement was not warranted. Merely because Section 11(1) of the Act does not postulate any such punishment, would not result into a conclusion that Rule 27 of the Rules is liable to be ignored. We are also satisfied that the principle of proportionate punishment cannot be invoked unless any material irregularity in following the procedure for holding inquiry has been committed. No such irregularity or non-observance of the principles of natural justice has been pointed out, which may lead us to observe the Wednesbury principle, as laid down by a Constitution Bench of Hon'ble the Supreme Court in the case of **Rameshwar Prashad (VI) v. Union of India, (2006) 2 SCC 1**. It

has been laid down by Hon'ble the Supreme Court that the correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration; (ii) it has ignored a very relevant material which it should have taken into consideration; and (iii) it is so absurd that no sensible person could ever have reached it. If none of the aforementioned situations are present then the Court would not go into the correctness of the decision made by the Administrative Authority in accordance with the rules and the Court is not to substitute its decision to that of the Administrative Authorities. In other words, the scope of judicial review has been limited to the deficiency in the decision making process and not the actual decision. Therefore, the question of proportionate punishment is not open to interference by this Court. Accordingly, the writ petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)

December 8, 2006
JUDGE

Pkapoor

Referred to Reporter